Supreme Court, U.S.
FILED
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No. 99-

IN THE

Supreme Court of the United States

CREFLO A. DOLLAR, JR.,

Petitioner,

v.

JANICE ITSON HOLYFIELD,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF GEORGIA

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Whether the Supreme Court of Georgia has sanctioned a departure from the accepted and usual course of judicial proceedings by the lower court, as to call for the exercise of the Surpeme Courts power of supervision.

Whether O.C.G.A. § 5-6-35(a)(2) is vague and ambiguous as to non-party witness so as to be in conflict with Federal Fifth Amendment right to due process.

PARTIES TO THE PROCEEDINGS

Evander Holyfield and Janice Itson Holyfield are the original parties to this action. Creflo A. Dollar, Jr. is a non-party witness.

The Attorney General of the State of Georgia is also being served herein.

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Petitioner Creflo A. Dollar, Jr., respectfully requests that a Writ of Certiorari be issued to review the judgment of the Supreme Court of the State of Georgia.

OPINIONS BELOW

The Opinion of the Supreme Court of the State of Georgia, dated February 25, 2000, is not published. (App. A). The Opinion of the Superior Court of Fayette County, dated December 21, 1999, is also not published (App. B).

STATEMENT OF JURISDICTION

The judgment of the Supreme Court of the State of Georgia was dated and entered on February 25, 2000. The Supreme Court of the State of Georgia denied a timely Motion for Reconsideration on March 9, 2000 (App. C). Jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fifth Amendment of the United States Constitution provides in relevant part; "No person shall . . . be deprived of life, liberty, or property, without due process of law".

O.C.G.A. § 5-6-35(a)(2) provides in relevant part:

> Cases requiring application for appeal; contents, filing, and service of application; exhibits; response by opposing party; issuance of appellate court order regarding appeal; procedure; supersedeas; jurisdiction of appeal.

(a) Appeals in the following cases shall be taken as provided in this Code section:

(2) Appeals from judgments or orders in divorce, alimony, child custody, and other domestic relations cases including, but not limited to, granting or refusing a divorce or temporary or permanent alimony, awarding or refusing to change child custody, or holding or declining to hold persons in contempt of such alimony or child custody judgment or orders.

STATEMENT OF THE CASE

The fundamental questions are whether application of O.C.G.A. § 5-6-35(a)(2) to a non-party witness is in conflict with Fifth Amendment rights to due process and whether the Supreme Court of Georgia has sanctioned a departure from the accepted and usual course of judicial proceedings by the lower court, as to call for the exercise of Supreme Court's power of supervision.

A. Backround Of the March 9, 2000 opinion

Creflo A. Dollar, Jr., Petitioner herein, is the senior pastor of World Changers Ministries Christian Center. In that capacity he provided marital counseling to Evander Holyfield and Janice Holyfield. Evander Holyfield filed for divorce in the Fayette County Superior Court. Janice Holyfield served a subpoena duces tecum on petitioner on June 14, 1999, requesting among other things, the production of marital counseling records.

Petitioner filed a Motion for Protective Order on June 28, 1999 contending that the clergy privilege pursuant to O.C.G.A § 24-9-22 rendered him not compellable or competent to testify as a witness in the action. Further, petitioner objected to the Request for Production of documents and the deposition on the basis that testifying in a divorce action between two members of his congregation, to whom he provided marital counseling violates his religious beliefs and practices in violation of the Establishment Clause and Free Exercise Clause of the U.S. Constitution.

B. Proceedings Below

On August 3, 1999, defendant Janice Holyfield filed a Response to Motion for Protective Order and a Motion for Contempt. On August 27, 1999 the trial Court denied petitioner's Motion for Protective Order and denied Janice Holyfield's Motion for Contempt. This order was entered September 21, 1999. Petitioner filed a Notice of direct appeal as a non party witness on September 29, 1999.

On November 8, 1999 , defendant Janice Holyfield filed a Second Motion for Contempt. Petitioner was never personally served with his second Motion for Contempt. Petitioner filed a Motion to Dismiss contending that he was not served and no proof of service was provided. Further petitioner contended that the trial court did not have jurisdiction to hear the matter pursuant to O.C.G.A. § 9-11-37(a)(1) and § 9-11-37(b)(1) which requires that the Motion for Contempt be filed in the County where the deposition is to be taken. In the instant case that County would have been Cobb County instead of Fayette County, Georgia. Also, Petitioner's Motion to Dismiss was filed on the basis that the Notice of Appeal filed on September 29, 1999 had not been dismissed. Therefore a supersedeas attached.

O.C.G.A. § 9-11-34(c) and O.C.G.A. § 9-11-37(a)(2). Petitioner contends that the Trial Court was without jurisdiction to proceed further in this case because of the notice of appeal filed in the case on September 29, 1999. There was never a motion to dismiss the appeal filed.

The trial court denied Petitioner's Motion to Dismiss and Janice Holyfield's Motion for Contempt. However the trial court scheduled the deposition at the court on December 21, 1999. The trial court refused to enter its December 16, 1999 order until the morning of the scheduled deposition in response to Petitioner's Motion for Mandmus and Prohibition which precluded Petitioner's right to appeal the decision prior to the scheduled deposition.

Petitioner filed a Motion to Disqualify or Recuse based on exparte communications between counsel representing defendant Janice Holyfield and the trial court at a hearing where Petitioner was not required to be present. Petitioner's request for the court transcript was denied. The trial Court ruled that the Motion was untimely and denied the Motion. The court held Petitioner in Contempt on December 21, 1999. Petitioner filed a direct appeal as a non party witness pursuant to *Ramsey v. Ramsey*, 231 Ga. 334, 201 S.E.2d 429 (1973), "when an individual is adjudged in contempt the Trial Court is done with the matter and to require an application for discharge, as a condition precedent to appeal, is usually a futile and empty gesture." On February 25, 2000, the Supreme Court of the State of Georgia dismissed the appeal on the grounds that it should have been filed by application pursuant to O.C.G.A. § 5-6-35(a)(2). Petitioner filed a Motion for Reconsideration which was denied on March 9, 2000. On March 10, 2000 an emergency Application for Stay Enforcement of Judgment Pending consideration of Petition for Writ of Certiorari to the United States Supreme Court was filed. It was denied on March 10, 2000.

REASONS FOR GRANTING THE WRIT

I. THE PETITION FOR WRIT OF CERTIORARI SHOULD BE GRANTED BECAUSE THE SUPREME COURT OF GEORGIA HAS SANCTIONED A DEPARTURE FROM THE ACCEPTED AND USUAL COURSE OF JUDICIAL PROCEEDINGS BY THE LOWER COURT AS TO CALL FOR THE EXERCISE OF THE SUPREME COURT'S POWER OF SUPERVISION

The proceedings below departed from the usual and accepted course of Judicial Proceedings in several respects. First and foremost is the fact that the trial court did not have jurisdiction to enter a contempt order. Petitioner was never served with the second Motion for Contempt.

Secondly the deposition, was scheduled in Cobb County. According to O.C.G.A. § 9-11-37(a)(1), an application for an order to a deponent who is not a party shall be made to the court in the county where the deposition is being taken. Further § 9-11-37(b)(1) states that, failure to comply with order. Sanctions by Court in County where deposition is taken. If a deponent fails to be sworn or to answer a question after being directed to do so by the court in the county in which the deposition is being taken, the failure may be considered a contempt of that court. In the present case contempt could only lie in Cobb County. Therefore, the trial court did not have jurisdiction to enter a contempt order respecting the deposition of Petitioner.

Furthermore, the trial court refused to enter its December 15, 1999 order which ordered that Petitioner show up for deposition on December 21, 2000, until Petitioner filed a

Mandamus and Prohibition Motion. However, since the order was filed within thirty or forty minutes of the scheduled deposition unknown to Petitioner's counsel, it thwarted Petitioners right to a direct appeal or appeal by application.

The trial court departed from the accepted and usual course of judicial proceedings by ruling on Petitioners Motion to recuse even though Petitioner met the threshold requirement that the Motion be heard by another judge.

II. O.C.G.A. § 5-6-35(a)(2) IS VAGUE AND AMBIGUOUS AS APPLIED TO NON PARTY WITNESSES IN CONFLICT WITH FIFTH AMENDMENT RIGHT TO DUE PROCESS AND IS THEREFORE REPUGNANT TO THE UNITED STATES CONSTITUTION

The application of § 5-6-35(a)(2) to other than parties to a divorce action is repugnant to the Constitution. There has been no notice of application of this code section to non-party witnesses from a case law or legislative history standpoint. O.C.G.A. § 5-6-35(a)(2) addresses issues of alimony and child custody. In applying this statute the court has held that any party who seeks to appeal a judgment or an order entered in a domestic relations case must follow the procedures set out in same said code section. *Horton v. Kitchens*, 259 Ga. 446, 383 S.E.2d 871 (1989). It does not address what non-party witnesses are to do.

O.C.G.A. § 5-6-35(a)(2) by its very nature contemplates appeal issues involving party spouses. Therefore, any reference to contempt matters within O.C.G.A. § 5-6-35(a)(2) appears to be contempt actions involving party spouses.

CONCLUSION

For the foregoing reasons, the petition for writ of certiorari should be granted.

Respectfully submitted,

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APPENDIX A — ORDER OF THE SUPREME COURT OF *GEORGIA DATED FEBRUARY 25, 2000*

SUPREME COURT OF GEORGIA
Case No. S00A0813.

Atlanta

The Honorable Supreme Court met pursuant to adjournment.

The following order was passed:

EVANDER HOLYFIELD v.
JANICE MARIE ITSON HOLYFIELD

From the Superior Court of Fayette County.

Appellant Creflo Dollar filed a direct appeal of the trial court's order finding him in contempt for failing to appear for a court-ordered deposition in the underlying divorce action. However, as Dollar seeks review of a domestic relations order, he was required to follow discretionary application procedures. As he failed to do so, this direct appeal hereby is dismissed. See OCGA § 5-6-35 (a) (2).

All the Justices concur, except Carley, J., who dissents.

APPENDIX B — ORDER OF THE SUPERIOR COURT OF FAYETTE COUNTY, STATE OF GEORGIA DATED DECEMBER 21, 1999

IN THE SUPERIOR COURT OF FAYETTE COUNTY

STATE OF GEORGIA

CAFN: 99V-0285(M)

EVANDER HOLYFIELD

Plaintiff,

vs.

JANICE MARIE ITSON HOLYFIELD

Defendant.

ORDER

The Defendant has moved this Court to hold Rev. Creflo Dollar in contempt for failure to appear and be deposed pursuant to a lawful notice to do so. Pursuant thereto this Court held a hearing on Tuesday, December 16th, 1999 ordering Rev. Creflo Dollar to appear for deposition in the Fayette County Government Center on Tuesday, December 21st, 1999, a copy of which is attached hereto.

Rev. Dollar has failed and refused to appear for said deposition. Competent and unrebutted testimony shows Defendant has expended $0 in attorneys fees and litigation expenses seeking to depose Rev. Dollar.

Appendix B

IT IS THEREFORE ADJUDGED that Rev. Creflo Dollar is in wilful contempt of a lawful order of this Court. This Court orders that Rev. Creflo Dollar be incarcerated in the common jail of Fayette County, Georgia until he purges himself of contempt ~~by paying to the Defendant the above stated sum, and~~ by submitting to the Court ordered deposition, answering all questions not subject to ministerial privilege truthfully and completely, and to produce all documents lawfully requested of him.

IT IS FURTHER ORDERED that the Sheriff of Fayette County, Georgia or his lawful deputies incarcerate said Rev. Creflo Dollar in the common jail of Fayette County, Georgia INSTANTER, there to hold him until he purges himself of contempt as set out above.

SO ORDERED this 21st Day of December, 1999.

s/ Ben J. Miller
HON. BEN J. MILLER
JUDGE SUPERIOR COURT
GRIFFIN JUDICIAL CIRCUIT

APPENDIX C — ORDER OF THE SUPREME COURT OF GEORGIA DENYING MOTION FOR RECONSIDERATION DATED MARCH 9, 2000

SUPREME COURT OF GEORGIA

Case No. S00A0813 Atlanta, March 9, 2000

The Honorable Supreme Court met pursuant to adjournment.

The following was passed:

EVANDER HOLYFIELD v.
JANICE MARIE ITSON HOLYFIELD

Upon consideration of the Motion for Reconsideration filed in this case, it is ordered that it be hereby denied.

All the Justices concur, except Benham, C.J., and Charley, J., who dissent.

Supreme Court, U.S.
FILED
JUN 07 2000
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No. 99-1972

IN THE
SUPREME COURT OF THE UNITED STATES

CREFLO A. DOLLAR, JR.,
Petitioner,

v.

JANICE ITSON HOLYFIELD,
Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME COURT OF THE STATE OF GEORGIA

RESPONDENT'S BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

Whether the Supreme Court of Georgia has sanctioned a departure from the accepted and usual course of judicial proceedings by the lower court, as to call for the exercise of the Surpeme (sic) Courts (sic) power of supervision.

Whether O.C.G.A. § 5-6-35(a)(2) is vague and ambiguous as to non-party witness so as to be in conflict with Federal Fifth Amendment right to due process.

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Petitioner has requested that this Court issue a Writ of Certiorari to review the "judgment" of the Supreme Court of the State of Georgia. There has been no judgment issued by the Georgia Supreme Court, only an Order dismissing Petitioner's appeal of the Fayette County Superior Court's Order holding Petitioner in contempt. (App. A). For this reason and those stated in this her Brief in Opposition to the Petition for Writ of Certiorari, Respondent Janice Marie Itson Holyfield respectfully requests that the Court deny Creflo A. Dollar, Jr.'s Petition.

OPINIONS BELOW

There have been no opinions, published or non-published, issued by any court in this matter. Petitioner mistakenly refers to a February 25, 2000, Order from the Supreme Court of Georgia, and a December 21, 1999, Order from the Superior Court of the State of Georgia, as opinions. (App. A; App. B).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Fifth Amendment to the United States Constitution. The Fifth Amendment of the United States Constitution provides in relevant part: "No person shall . . . be deprived of life, liberty, or property, without due process of law."

Fourteenth Amendment to the United States Constitution. The Fourteenth Amendment of the United States Constitution provides in relevant part:

> "Section 1: All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

O.C.G.A. § 5-6-35 (App. G)

STATEMENT OF THE CASE

Petitioner Creflo A. Dollar, Jr. has failed to show any compelling reason to grant a Writ of Certiorari in this matter. The issues alleged by Petitioner do not involve a federal question, and Petitioner has failed to demonstrate a departure from the accepted and usual course of judicial proceedings to warrant the exercise of this Court's supervisory powers. Moreover, the underlying divorce action has been settled through agreement of the parties, thereby making Petitioner's arguments moot. Furthermore, the petition contains numerous misstatements of fact and law.

A. Factual Background of the Case

On March 20, 1999, Evander Holyfield filed his Petition for Divorce from Respondent, Janice Marie Itson Holyfield in the Superior Court of Fayette County, Georgia. Respondent counterclaimed, seeking an equitable division of marital property, alimony and child support. During the

course of discovery, Respondent learned, *inter alia*, that Mr. Holyfield had given large sums of money to the World Changers Ministries Christian Center and its pastor, Petitioner Creflo A. Dollar, Jr. These monies totaled over 18 million dollars, including payments approaching 4 million dollars just days before Mr. Holyfield filed his divorce action. In addition, Respondent learned that at least two of these payments were made via checks written directly to Petitioner, rather than to his ministry. On June 15, 1999, Respondent exercised her rights under Georgia's Civil Practice Act and personally served Petitioner with a subpoena duces tecum for his deposition and the production of relevant documents related to monies he and his ministry had received from Mr. Holyfield. The subpoena directed Petitioner to appear for deposition and produce the requested documents at the law offices of Respondent's counsel in Cobb County, Georgia. As shown herein, this subpoena would set off a protracted discovery battle between Petitioner and Respondent that would not conclude until March 10, 2000, when the parties to the underlying divorce action settled their case through agreement. The following will also demonstrate the Petitioner's repeated defiance of the trial court's authority, and his inability to comply with appellate procedures, resulting in the dismissal of all avenues of appeal.

B. Proceedings Below

Upon being served with Respondent's subpoena duces tecum, Petitioner filed a Motion for Protective Order in the Superior Court of Fayette County, Georgia. Petitioner failed and refused to appear for a deposition or produce the requested documents. Within his motion, Petitioner alleged that he was not competent to testify due to the clergy privilege provided by O.C.G.A. § 24-9-22. Respondent then filed her first Application for Contempt, asking that the trial court hold

Petitioner in contempt for his non-compliance with the subpoena duces tecum. Respondent also filed a Response and Brief in Opposition to Petitioner's Motion for Protective Order. The trial court conducted a hearing upon Petitioner's Motion for Protective Order and Respondent's response. Upon hearing, the trial court correctly found that the clergy privilege was specifically limited to statements professing religious faith or seeking spiritual comfort or guidance, and denied Petitioner's motion. The trial court issued an Order on September 21, 1999, directing the Petitioner to appear for deposition and produce all non-protected documents within sixty (60) days of said date. (App. C). Contrary to the allegation within the Petition for Writ of Certiorari, the trial court never heard argument on Petitioner's first Application for Contempt, and therefore never denied the same.

Despite Respondent's continued efforts to schedule the deposition following the trial court's ruling, Petitioner completely failed and refused to appear for a deposition or produce the requested documents. Respondent then filed her Second Application for Contempt. Petitioner filed a Motion to Dismiss the Application, alleging first that he was never personally served with the application, and second, that the trial court did not have jurisdiction to hear the motion as it should have been filed in the county where the deposition was sought, Cobb County, Georgia. On December 16, 1999, the trial court heard argument upon Respondent's Second Application for Contempt and Petitioner's Motion to Dismiss. The trial court correctly noted that the Petitioner waived his venue objection when he filed his Motion for Protective Order in Fayette County Superior Court, rather than Cobb County Superior Court. Filing his Motion for Protective Order in the court where the cause was pending amounted to a general appearance, and therefore Petitioner submitted himself to the jurisdiction of Fayette Superior Court. Sorrells v. Cole, 111

Ga. App. 136, 141 S.E.2d 193 (1965). Furthermore, Petitioner was in fact personally served with Respondent's Second Application for Contempt, and the trial court was not swayed by Petitioner's argument to the contrary, as it denied his Motion to Dismiss the Second Contempt Application.

Rather than hold Petitioner in contempt upon the hearing on December 16, 1999, the trial court ordered him to appear at the courthouse on December 21, 1999, to submit to a deposition and to produce the requested documents. After Petitioner again failed to appear on December 21, he was held in contempt by the trial court and ordered jailed until he purged himself of the contempt by submitting to the deposition, answering all questions not subject to ministerial privilege, and producing all lawfully requested documents. (App. B). Petitioner alleges that his appellate rights were somehow prejudiced by the trial court's refusal to enter a contempt order following the December 16, 1999, hearing. The Petitioner was not held in contempt until December 21, 1999, when he failed to appear at the courthouse for his deposition. (App. B).

Petitioner further alleges that the trial court was without jurisdiction to proceed with Respondent's Second Application for Contempt, as he had filed a Notice of Appeal to Georgia's Court of Appeals of the trial court's denial of his Motion for Protective Order. However, Petitioner failed to follow the correct procedure for the appeal of an interlocutory order as mandated by O.C.G.A. § 5-6-34. This statute governs judgments and rulings which are deemed directly appealable to Georgia's Supreme Court and Court of Appeals. O.C.G.A. § 5-6-34. It clearly does not provide for a direct appeal of a trial court's order denying a motion for protective order. Instead, Petitioner was required to seek a certificate of immediate review from the trial court within ten (10) days of

its order. O.C.G.A. § 5-6-34(b). The practical effect of Petitioner's error was that a higher court did not obtain jurisdiction of the matter, and the trial court was not precluded from taking remedial measures pursuant to Respondent's Second Application for Contempt. Cherry v. Coast House, Ltd, 257 Ga. 403, 359 S.E.2d 904 (1987). The Georgia Supreme Court eventually dismissed the appeal based upon Petitioner's failure to follow the interlocutory application procedures mandated by O.C.G.A. § 5-6-34 (a). (App. D).

Following the trial court's Order holding him in contempt, Petitioner again filed a Notice of Appeal to the Court of Appeals of Georgia. (App. E). Because the matter related to witness testimony in a divorce action, the Court of Appeals transferred the matter to Georgia's Supreme Court. (App. F). The Supreme Court dismissed the appeal, as Petitioner had again failed to follow appellate procedures. (App. A). Since Petitioner sought to appeal an order in a domestic relations case, he was required to follow the discretionary application procedures mandated by O.C.G.A. § 5-6-35(a)(2). (App. G).

Thereafter, Petitioner also filed a Motion for Reconsideration which was denied by Georgia's Supreme Court. Petitioner apparently also filed an emergency Application for Stay Enforcement of Judgment Pending Consideration of Petition of Writ of Certiorari to the United States Supreme Court. Petitioner failed to serve Respondent with a copy of said application, which was also denied.

REASONS NOT TO GRANT THE PETITION FOR WRIT OF CERTIORARI

Creflo A. Dollar, Jr. has filed with this Court a frivolous Petition for Writ of Certiorari. As demonstrated in the statement of the case, this appeal continues Petitioner's pattern of meritless, inappropriate, and improper filings and appeals. Petitioner Creflo A. Dollar, Jr. has failed to show any compelling reason to grant a Writ of Certiorari to the Supreme Court of the State of Georgia in this matter. The issues alleged by Petitioner do not involve a federal question, and Petitioner has failed to demonstrate "a departure from the accepted and usual course of judicial proceedings to warrant the exercise of this Court's supervisory powers."

I. The Issues Presented are Moot

Petitioner seeks a Writ of Certiorari based upon Georgia Supreme Court's dismissal of his appeal of the trial court's order finding him in contempt. As noted above, the underlying divorce action was settled through agreement of the parties on March 10, 2000. Thereafter a settlement agreement was signed by the parties, and a Final Decree of Divorce was entered by the Fayette County Superior Court on June 16, 2000. As soon as the parties notified the trial court of the settlement on March 10, 2000, the trail court lifted its Order holding Petitioner in contempt. Petitioner was never fined nor jailed for his actions. Nor did he ever appear for a deposition or produce any documents. A federal court is without power to decide moot questions or to give advisory opinions which cannot affect the rights of the litigants in the case before it. Bus Employees v. Wisconsin Board, 340 U.S. 416, 71 S.Ct. 373 (1951). There being no subject matter upon which the judgment of this Court can operate, the cause is moot, and the Petition for Writ of Certiorari should be

denied. The issues alleged by Petitioner do not involve a federal question, and as outlined below, Petitioner has completely failed to demonstrate a departure from the accepted and usual course of judicial proceedings to warrant the exercise of this Court's supervisory powers.

II. The Supreme Court of Georgia Has Not Sanctioned a Departure from the Accepted and Usual Course of Judicial Proceedings by the Lower Court as to Call for the Exercise of the Supreme Court's Power of Supervision

Petitioner attempts to argue that the first question presented to this Honorable Court is whether Georgia's Supreme Court, "has sanctioned a departure from the accepted and usual course of judicial proceedings by the lower court, as to call for the exercise of the Surpeme (sic) Courts (sic) power of supervision." Petitioner alleges that the trial court did not have jurisdiction to hold him in contempt as he was not personally served with Respondent's Second Application for Contempt. However, Petitioner was in fact personally served with Respondent's Second Application for Contempt, and the trial court denied Petitioner's Motion to Dismiss Respondent's Application.

Petitioner next argues that, "§ 9-11-37(b)(1) states that, failure to comply with order. (sic) Sanctions by Court in County where deposition is taken." (sic). Based upon Petitioner's statement of the case, Respondent can surmise that Petitioner is attempting to argue that the Fayette County Superior Court did not have jurisdiction to hold him in Contempt, as the requested deposition was to take place in Cobb County, Georgia. As noted above, Petitioner waived any objection to venue by filing his Motion for Protective Order in the Superior Court of Fayette County. Sorrells v.

Cole, 111 Ga. App. 136, 141 S.E.2d 193 (1965). The trial court specifically advised Petitioner of said waiver during the hearing on Respondent's Second Application for Contempt. Petitioner's repeated reliance on this argument further demonstrates his pattern of frivolous and improper filings in this matter.

Petitioner's third contention is that the Georgia Supreme Court has sanctioned a departure from the ordinary and usual course of judicial proceedings because the trial court refused to enter its December 15 (sic), 1999, Order until December 21, 1999. Petitioner was not held in contempt until December 21, 1999, when he failed to appear for his deposition as ordered to do so by the trial court on December 16, 1999. (App. B). The trial court painstakingly explained this to counsel for Petitioner on December 21, 1999. Petitioner could not possibly appeal an Order holding him in contempt until he was actually held in contempt. (App. B). Thereafter, Petitioner proceeded with his improper filing of a Notice of Appeal, in direct conflict with the discretionary appeal procedure mandated by O.C.G.A. § 5-6-35(a)(2). Petitioner's appeal was dismissed because of his failure to follow procedure, not due to any timing of the trial court in entering its contempt order. (App. A). Furthermore, it appears that Respondent would have undertaken his improper appeal regardless of when the contempt order was entered by the trial court.

Lastly, Petitioner argues that the trial court departed from the accepted and usual course of judicial proceedings by, "ruling on Petitioners (sic) Motion to Recuse even though Petitioner met the threshold requirement that the Motion be heard by another Judge." Pursuant to Rule 25 of the Uniform Rule for the Superior Courts of Georgia, any motion to recuse shall be filed and presented to the judge presiding in a case no

later than five (5) days after the affiant first learned of the alleged grounds for disqualification, unless good cause is shown. During the December 16, 1999, hearing on Respondent's Second Application for Contempt, and during the December 21, 1999, hearing following the Petitioner's failure to appear for his deposition, the trial court addressed Petitioner's Motion to Recuse. On both occasions, the court advised counsel for Petitioner that the motion was not timely pursuant to the Rules of the Superior Court, and furthermore, that if all the facts contained in the motion and supporting affidavits were true, it would not be sufficient to warrant recusal. Therefore, Petitioner has incorrectly alleged that his Motion to Recuse met the threshold requirement that the Motion be heard by another judge.

III. O.C.G.A. § 5-6-35(a)(2) Is Not Vague and Ambiguous As Applied to Non-Party Witnesses and Does Not Conflict With any Fifth or Fourteenth Amendment Rights to Due Process.

Having repeatedly and utterly failed to properly follow appellate procedures mandated by O.C.G.A. §§ 5-6-34 and 5-6-35, Petitioner has apparently decided to challenge the latter statute as being vague and ambiguous. Respondent surmises that Petitioner intended to allege a violation of his due process rights under the Fourteenth Amendment, rather than the Fifth Amendment. The Fifth Amendment contains a due process clause restricting national power, as the Fourteenth Amendment does so for state power. Malinski v. People of State of New York, 324 U.S. 401, 65 S.Ct. 781 (1945). The statute which caused Petitioner such confusion was enacted by the Georgia Legislature. (App. G).

Petitioner presents absolutely no authority in support of his contention that O.C.G.A. § 5-6-35(a)(2) is vague and

ambiguous, nor any compelling practical argument for the position. Such an unsupported allegation again demonstrates Petitioner's pattern of frivolous and improper filings in this matter. The statute states in pertinent part:

"(a) Appeals in the following cases shall be taken as provided in this Code section:

. . .

> (2) Appeals from judgments or orders in divorce, alimony, child custody, and other domestic relations cases ...

. . .

(b) All appeals taken in cases specified in subsection (a) of this Code section shall be by application in the nature of a petition enumerating the errors to be urged on appeal and stating why the appellate court has jurisdiction.

. . .

(d) The application shall be filed with the clerk of the Supreme Court or the Court of Appeals within 30 days of the entry of the order, decision, or judgment complained of. . ." (App. G).

Petitioner sought to appeal an order in a divorce case holding him in contempt. While it may be true that most orders in divorce cases are addressed to parties to the action, there is absolutely no language in the statute to indicate that it applies only to parties. This code section has existed in some form since 1979. O.C.G.A. § 5-6-35. The Georgia Legislature, contemplating the large number of divorce and domestic relations cases, enacted this statute to, "ameliorate the appellate courts' massive case loads." Scruggs v. Georgia

Dept. of Human Resources, 261 Ga. 587, 408 S.E.2d 103 (1991). Petitioner simply failed to properly appeal the Order holding him in contempt when he filed his Notice of Appeal rather than an application for the same. (App. E). Following his error, Petitioner has chosen to attack the statute as vague and ambiguous, despite offering no compelling supporting argument.

Furthermore, Petitioner raises this issue for the first time in his Petition for Writ of Certiorari. An issue will not be considered for first time by Supreme Court on petition for certiorari. Kamen v. Kemper Financial Services, Inc., 500 U.S. 90, 111 S.Ct. 1711 (1991).

CONCLUSION

For the foregoing reasons, Creflo A. Dollar, Jr.'s Petition for Writ of Certiorari should be denied.

Respectfully submitted,

/s/_____
C. Wilbur Warner, Jr.
Counsel of Record
John C. Mayoue
Warner, Mayoue & Bates, P.C.
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APPENDIX A

SUPREME COURT OF GEORGIA

[Filed February 25, 2000]

No. S00A0813

The Honorable Supreme Court met pursuant to adjournment.

The following order was passed:

EVANDER HOLYFIELD v. JANICE MARIE ITSON HOLYFIELD.

From the Superior Court of Fayette County.

Appellant Creflo Dollar filed a direct appeal of the trial court's order finding him in contempt for failing to appear for a court-ordered deposition in the underlying divorce action. However, as Dollar seeks review of a domestic relations order, he was required to follow discretionary application procedures. As he failed to do so, this direct appeal hereby is dismissed. See OCGA § 5-6-35 (a) (2).

All the Justices concur, except Carley, J., who dissents.

SUPREME COURT OF STATE 0F GEORGIA
Clerk's Office, Atlanta

I hereby certify that the above is a true extract from the minutes of the Supreme Court of Georgia

Witness my signature and the seal of said court hereto affixed the day and year last above written.

/s/_____
Chief Deputy Clerk

APPENDIX B

IN THE SUPERIOR COURT OF FAYETTE COUNTY STATE OF GEORGIA

[Filed December 21, 1999]

No. 99V-0285(M)

EVANDER HOLYFIELD	)
Plaintiff,	)
	)
v.	)
	)
JANICE MARIE ITSON HOLYFIELD	)
Defendant.	)
	)

ORDER

The Defendant has moved this Court to hold Rev. Creflo Dollar in contempt for failure to appear and be deposed pursuant to a lawful notice to do so. Pursuant thereto this Court held a hearing on Tuesday, December 16th, 1999 ordering Rev. Creflo Dollar to appear for deposition in the Fayette County Government Center on Tuesday, December 21st, 1999, a copy of which is attached hereto.

Rev. Dollar has failed and refused to appear for said deposition. Competent and unrebutted testimony shows Defendant has expended $_0_ in attorneys fees and litigation expenses seeking to depose Rev. Dollar.

IT 1S THEREFORE ADJUDGED that Rev. Creflo Dollar is in wilful contempt of a lawful order of this Court. This Court orders that Rev. Creflo Dollar be incarcerated in the common jail of Fayette County Georgia until he purges himself of contempt . . . , by submitting to the Court ordered deposition, answering all questions not subject to ministerial privilege truthfully and completely, and to produce all documents lawfully requested of him.

IT IS FURTHER ORDERED that the Sheriff of Fayette County, Georgia or his lawful deputies incarcerate said Rev. Creflo Dollar in the common jail of Fayette County, Georgia INSTANTER, there to hold him until he purges himself of contempt as set out above.

SO ORDERED this 21st Day of December, 1999

/s/_____

HON. BEN J. MILLER
JUDGE SUPERIOR COURT
GRIFFIN JUDICIAL CIRCUIT

APPENDIX C

IN THE SUPERIOR COURT OF FAYETTE COUNTY
STATE OF GEORGIA

[Filed September 21, 1999]

No. 1999V-0285M

EVANDER HOLYFIELD	)
Plaintiff,	)
	)
v.	)
	)
JANICE MARIE ITSON HOLYFIELD	)
Defendant.	)
	)

ORDER

Pastor Creflo Dollar's Motion for Protective Order, and Defendant's Response to said motion, having been read and considered, and the Court, having fully considered the full record and all submissions and arguments of counsel,

IT IS HEREBY ORDERED, as follows:

1.

Pastor Creflo Dollar failed to show good cause why his Motion for Protective Order should be granted, and, therefore, said Motion is denied.

2.

Pastor Creflo Dollar is hereby ordered to provide counsel for Defendant his available deposition dates within ten (10) days of the date of the hearing, that date being September 21st, 1999.

3.

Pastor Creflo Dollar is hereby ordered to submit to his deposition in this matter, and to produce all non-protected documents responsive to Defendant's requests within sixty (60) days of the date of this Order.

SO ORDERED, this 20th day of September, 1999.

/s/_____
THE HONORABLE BEN J. MILLER
Judge, Superior Court of Fayette County
Griffin Judicial Circuit

Prepared by:

WARNER, MAYOUE & BATES, P.C.

/s/_____
JOHN C. MAYOUE
Ga: Bar No. 479737

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MCNALLY, FOX & CAMERON

/s/_____
PATRICK J. FOX
(With express permission)
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APPENDIX D

SUPREME COURT OF GEORGIA

[Filed February 11, 2000]

No. S00A0698

Atlanta February 11, 2000

The Honorable Supreme Court met pursuant to adjournment.

The following order was passed:

EVANDER HOLYFIELD v. JANICE MARIE ITSON HOLYFIELD

In the Superior Court of Fayette County.

Appellant Creflo Dollar filed a direct appeal of the trial court's denial of his Motion for Protective Order in the Holyfields' divorce action. As Dollar seeks review of an interlocutory order, he was required to follow interlocutory application procedures under OCGA § 5-6-34 (b). Because he failed to do so, this direct appeal hereby is dismissed.

SUPREME COURT OF STATE 0F GEORGIA
Clerk's Office, Atlanta

I hereby certify that the above is a true\extract from the minutes of the Supreme Court of Georgia

Witness my signature and the seal of said court hereto affixed the day and year last above written.

/s/_____
Chief Deputy Clerk

APPENDIX E

IN THE SUPERIOR COURT OF FAYETTE COUNTY
STATE OF GEORGIA

[Filed December 22, 1999]

No. 1999V-0285M

EVANDER HOLYFIELD
Plaintiff,

v.

JANICE MARIE ITSON HOLYFIELD
Defendant.

AMENDED NOTICE OF APPEAL

NOW COMES PASTOR CREFLO DOLLAR and files this Amended Notice of Appeal of this Court's Order of December 21, 1999, to the Georgia Court of Appeals, dismissing Pastor Dollar's appeal filed on September 29, 1999, denying Pastor Dollar's Motion to Disqualify or Recuse, Motion to Dismiss, Motion for Attorney Fees, while ordering sua sponte that Pastor Dollar appear for deposition and production of documents on December 21, 199, or fact the contempt powers of the Court.

Pastor Dollar also files Notice of Appeal of this Court's Order of December 21, 1999, holding him in contempt and denying Motion to Recuse and Disqualify.

The clerk is requested to transmit Defendant's Application for Contempt, Pastor Dollar's Response to Contempt, Motion for Protective Order, Defendant's Second Application for Contempt, Order entered September 21, 1999, Notice of Appeal filed September 29, 1999, Pastor Dollar's Motion to Dismiss, Response to Defendant's Second Application for Contempt, Attorney Fees and Costs, Supplementary letter dated September 3, 1999 from the undersigned counsel, Notice of Intent to Appeal and Amended Notice of Intent to Appeal, transcript of the August 27, 1999 hearing, the December 1, 199 hearing the December 16, 1999 hearing and the December 21, 1999 hearing, Notice of Intent to Appeal and Amended Notice of Intent to Appeal, Notice of Appeal.

This direct appeal is filed pursuant to Castleberry's Food Company v. Smith, 205 Ga. App. 859, Brown v. E. I. Dupont de Nemours & Co., A99A1245 (11/18/99); Mitcham v. Blalock, 268 Ga. 644, 646-647 (4) (491 S.E. 2d 782) (1977).

This 21 day of December, 1999.

Respectfully submitted,

/s/_____

Lecora Bowen
Georgia Bar No. 071252

Lecora Bowen & Associates
1851 Hawthorne Avenue
College Park, Georgia 30337
(404) 761-8818

APPENDIX F

Court of Appeals
of the State of Georgia

[Filed January 26, 2000]

No. A00A1078

ATLANTA, JANUARY 26, 2000

The Court of Appeals hereby posses the following order:

A00A1078. DOLLAR v. HOLYFIELD

Creflo Dollar appeals the trial court's order finding him in contempt for failure to appear for deposition pursuant to court order (Dollar 2). Jurisdiction of appellate review of a trial court's finding of contempt in a divorce proceeding is generally in the Court of Appeals. Crocker v Crocker, 232 Ga. 97 (205 SE2d 308) (1974); Crute v. Crute, 208 Ga. 723 (69 SE2d 257) (1952).

In Dollar v. Holyfield, A00A0932 (Dollar 1), Creflo Dollar appealed the trial court's denial of his motion for protective order concerning discovery in the case which underlies both of these appeals, Holyfield v. Holyfield, S00A0698, presently on appeal in the Georgia Supreme Court. Dollar 1, supra was transferred by this Court on

January 4, 2000, to the Supreme Court where it is shown as a related case to Holyfield v. Holyfield, supra.

Because Dollar 1 and Dollar 2 each related to witness testimony and holdings realted to the underlying divorce action, this case is hereby transferred to the Supreme Court. Ga. Const 1983, Art. VI, Sec. VI, Par. III (5).

1999V0285M

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta JAN 26 2000

I certify that the above is a true extract from the minutes of the Court of Appeals of Georgia.

Witness my signature and the seal of said court hereto affixed the day and year last above written.

Clerk

*/s/*_____

APPENDIX G

O.C.G.A. § 5-6-35 Cases requiring application for appeal; contents, filing, and service of application; exhibits; responses by opposing party; issuance of appellate court order regarding appeal; procedure; supersedeas; jurisdiction of appeal.

(a) Appeals in the following cases shall be taken as provided in this Code section:

(1) Appeals from decisions of the superior courts reviewing decisions of the State Board of Workers' Compensation, the State Board of Education, auditors, state and local administrative agencies, and lower courts by certiorari or de novo proceedings; provided, however, that this provision shall not apply to decisions of the Public Service commission and probate courts and to cases involving ad valorem taxes and condemnations;

(2) Appeals from judgments or orders in divorce, alimony, child custody, and other domestic relations cases including, but not limited to, granting or refusing a divorce or temporary or permanent alimony, awarding or refusing to change child custody, or holding or declining to hold persons in contempt of such alimony or child custody judgment or orders;

(3) Appeals from cases involving distress or dispossessory warrants in which the only issue to be resolved is the amount of rent due and such amount is $2,500.00 or less;

(4) Appeals from cases involving garnishment or attachment, except as provided in paragraph (5) of subsection (a) of Code Section 5-6-34;

(5) Appeals from orders revoking probation;

(6) Appeals in all actions for damages in which the judgment is $10,000.00 or less;

(7) Appeals, when separate from an original appeal, from the denial of an extraordinary motion for new trial;

(8) Appeals from orders under subsection (d) of Code Section 9-11-60 denying a motion to set aside a judgment or under subsection (e) of code Section 9-11-60 denying relief upon a complaint in equity to set aside a judgment;

(9) Appeals from orders granting or denying temporary restraining orders;

(10) Appeals from awards of attorney's fees or expenses of litigation under Code Section 9-15-14; and

(11) Appeals from decisions of the state courts reviewing decisions of the magistrate courts by de

novo proceedings so long as the subject matter is not otherwise subject to a right of direct appeal.

(b) All appeals taken in cases specified in subsection (a) of this Code section shall be by application in the nature of a petition enumerating the errors to be urged on appeal and stating why the appellate court has jurisdiction. The application shall specify the order or judgment being appealed and, if the order or judgment is interlocutory, the application shall set forth, in addition to the enumeration of errors to be urged, the need for interlocutory appellate review.

(c) The applicant shall include as exhibits to the petition a copy of the order or judgment being appealed and should include a copy of the petition or motion which led directly to the order or judgment being appealed and a copy of any responses to the petition or motion. An applicant may include copies of such other parts of the record or transcript as he deems appropriate. No certification of such copies by the clerk of the trial shall be necessary in conjunction with the application.

(d) The application shall be filed with the clerk of the Supreme court or the Court of Appeals within 30 days of the entry of the order, decision, or judgment complained of and a copy of the application, together with a list of those parts of the record included with the application, shall be served upon the opposing party or parties as provided by law, except that the service shall be perfected at or before the filing of the application. When a motion for new trial, a motion in arrest of judgment, or a motion for judgment notwithstanding the verdict has been filed, the application shall be filed within

30 days after the entry of the order granting, overruling, or otherwise finally disposing of the motion.

(e) The opposing party or parties shall have ten days from the date on which the application is filed in which to file a response. The response may be accompanied by copies of the record in the same manner as is allowed with the application. The response may point out that the decision of the trial court was not error, or that the enumeration or error cannot be considered on appeal for lack of a transcript of evidence or for other reasons.

(f) The Supreme Court or the Court of Appeals shall issue an order granting or denying such an appeal within 30 days of the date on which the application was filed.

(g) Within ten days after an order issued granting the appeal, the applicant to secure a review of the issues, shall file a notice of appeal as provided by law. The procedure thereafter shall be the same as in other appeals.

(h) The filing of an application for appeal shall act as a supersedeas to the extent that a notice of appeal acts as supersedeas.

(i) This Code section shall not affect code Section 9-14-52, relating to practice as to appeals in certain habeas corpus cases.

(j) When an appeal in a case enumerated in subsection (a) of Code Section 5-6-34, but not in sections (a) of this Code section, is initiated by filing an otherwise timely application for permission to appeal pursuant to subsection (b)

of this Code section without also filing a timely notice of appeal, the appellate court shall have jurisdiction to decide the case and shall grant the application. Thereafter the appeal shall proceed as provided in subsection (g) of this Code section. (Ga. L. 1979, p. 619, §§ 3, 6,; Ga. L. 1982, p. 3, § 5; Ga. L. 1984, p. 22, § 5; Ga. L. 1984, p. 599, § 2; Ga. L. 1986, p. 1591, § 2; Ga. L. 1988, p. 1357, § 1; Ga. L. 1991, p. 599, § 2; Ga. L. 1986, p. 347, § 2; Ga. L. 1997, p. 543, § 1.)